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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/024,800

12/19/2001

Paul F. Nugent JR.

10183

6090

26884

7590

06/23/2004

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EXAMINER

GIBSON, RANDY W

ART UNIT

PAPER NUMBER

2841

DATE MAILED: 06/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/024,800

Applicant(s)

NUGENT, PAUL F.

Examiner

Randy W. Gibson

Art Unit

2841

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 7 June 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed June 7, 2004 have been fully considered but they are not persuasive. In his response, the applicant offers only one argument:

"In an apparent attempt to meet the language of claim 8, the Examiner is equating the mattress 12 of Sternberg with the claimed 'plate'. (See 3/4/04 Office Action at page 2, lines 15-17. However, the term 'plate' means 'a flat, thin piece of material, such as metal'. (See, e.g., dictionary definition in Attachment 1). (See also, e.g., U.S. Patent No. 4,043,413 that shows an upper plate 14 in FIG. 1 - Attachment 11.) The mattress 12 of Sternberg is not a 'plate'."

This argument fails for at least two reasons: (i) the "mattress" mentioned by the applicant is actually element "10", not "12" (it appears that applicant misread both the reference and the rejection); and, (ii) although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). No where did the examiner equate the mattress 10 with the "plate" claimed.

Since the applicant did not rebut, or even address, the examiner's arguments, the rejection still stands.

***Claim Rejections - 35 USC § 102***

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1, 2, 5, 8-11, and 15-19 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Sternberg (Patent Application Publication # US 2002/011275 A1). Sternberg disclose the claimed invention including an electronics box (50) and two elongated support members (20) with strain gages (p. 3, paragraph 0038) where the sole structural connection between the two support members is a surface plate (12). The fact that the support plate (12) is connected to the support members (20) via extension members (14) is not deemed significant since the claims as worded do not exclude such an embodiment.

***Claim Rejections - 35 USC § 103***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 3, 4, 6, 7, 12-14 and 20-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sternberg. Sternberg discloses the claimed invention, as discussed *supra*, except for the limitations of the exact location of the electronics box, the limitation of making the plate more rigid as the separation of the two members is increased, the

exact type of cable used, the exact dimensions of the support members, and the plate being transparent to a barcode scanner.

It does not appear that the precise location of the electronics box is critical to the operation of the device; the courts have held that merely shifting the position of a part in a way which does not change the operation of the device is a design choice which would have been obvious to the ordinary practioner. See *In re Japikse*, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950); *In re Kuhle*, 526 F.2d 553, 188 USPQ 7 (CCPA 1975): and, *MPEP* § 2144.04 (VI)(C).

It is inherent that the bed frame would have to be made more rigid to prevent it from collapsing if it were made larger. The examiner takes official notice that beds come in different sizes such as single, twin, full, queen, king, etc. The examiner notes that the courts have held that where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device, and a device having the claimed relative dimensions would not perform differently than the prior art device, then the claimed device was not patentably distinct from the prior art device; *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984); see also *MPEP* §§ 2144.02, 2144.03, & 2144.04 (IV)(A).

The R5232 lead is an off the shelf component which the applicant admits that he did not invent; it would have been obvious to the ordinary practioner to use a known part for its intended purpose. See *In re Leshin*, 227 F.2d 197, 125 USPQ 416 (CCPA 1960); and, *MPEP* §§ 2129 & 2144.07.

As for the exact length of the support members, the Federal Circuit has held that where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, then the claimed device is not patentably distinct from the prior art device. *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984).

As for the plate being transparent to radiation from a bar code scanner, the examiner notes that the supporting frame of a bed is usually not a continuous solid surface but rather comes as a wire grid for supporting a mattress; such a grid would inherently allow light to pass through its many apertures.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

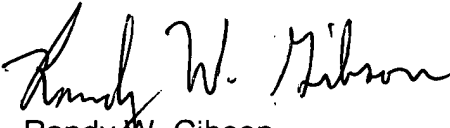
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Randy W. Gibson whose telephone number is (571) 272-2103. The examiner can normally be reached on Mon-Fri., 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David S Martin can be reached on (571) 272-2107. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Randy W. Gibson  
Primary Examiner  
Art Unit 2841